

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

EMILY RYO,
699 Exposition Boulevard
Los Angeles, CA 90089,

Plaintiff,

v.

Case No. 20-cv-1792

U.S. DEPARTMENT OF
HOMELAND SECURITY,
245 Murray Lane SW
Washington, DC 20528,

and

U.S. CITIZENSHIP AND
IMMIGRATION SERVICES,
P.O. Box 648010
Lee's Summit, MO 64064,

Defendants.

COMPLAINT

1. Plaintiff Emily Ryo brings this action against the U.S. Department of Homeland Security and its component agency, U.S. Citizenship and Immigration Services, under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendants have failed to comply with the applicable time-limit provisions of FOIA, Plaintiff is deemed to have exhausted her administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the Defendants from continuing to withhold department or agency records and ordering the production of department or agency records improperly withheld.

PARTIES

5. Plaintiff Emily Ryo, J.D., Ph.D., is a Professor of Law and Sociology and an academic researcher at the University of Southern California Gould School of Law. Plaintiff sought records under FOIA as part of her scholarly research on the U.S. immigration system. Plaintiff resides in California.

6. Defendant U.S. Department of Homeland Security (DHS) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DHS—through its component U.S. Citizenship and Immigration Services—has possession, custody, and control of the records that Plaintiff seeks.

7. Defendant U.S. Citizenship and Immigration Services (USCIS) is a component of DHS—an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1)—and is headquartered in Washington, DC. USCIS has possession, custody, and control of the records that Plaintiff seeks.

STATEMENT OF FACTS

2018 Naturalization Data FOIA Request

8. On August 6, 2018, Plaintiff submitted a FOIA request to USCIS, seeking, *inter alia*, records related to naturalization data:

I request anonymized, individual-level data on every person who filed an application for naturalization with the U.S. Citizenship and Immigration Services (“USCIS”) between September 13, 2013 and the present.

9. Plaintiff’s request included several specific categories of data related to applicants’ responses to USCIS Form N-400, Application for Naturalization. A copy of the 2018 Naturalization Data FOIA Request is attached hereto as Exhibit A and incorporated herein.

10. In her 2018 Naturalization Data FOIA Request, Plaintiff also requested “current translation files for any fields containing coded entries (e.g., data dictionary), and detailed notes on the database query and limitations of the data, including explanations of any changes to the way any given field might have been coded over time,” as well as “an anonymized ID to identify the individual both within a single table and across separate tables or outputs if the data is provided in separate tables.” Ex. A.

11. On October 16, 2018, USCIS sent Plaintiff an email with an attached acknowledgment letter dated September 20, 2018, acknowledging Plaintiff’s 2018 Naturalization Data FOIA Request and assigning it tracking number COW2018000954. USCIS informed Plaintiff that it had placed her request on simple track processing.

12. In the acknowledgment letter, USCIS asked Plaintiff to certify “that a FOIA response consisting of those database fields captured in the naturalization application database, without anonymization and without further added explanation,” would be sufficient to meet

Plaintiff's needs. The letter further stated that if such a response was not sufficient, Plaintiff's response would be administratively closed.

13. By letter dated October 16, 2018, Plaintiff responded to USCIS:

I am writing to certify that a FOIA response consisting of those database fields captured in the naturalization application database, as detailed in my FOIA request dated August 6, 2018 [], will be sufficient to meet my needs. I understand that the FOIA response will not contain any fields or explanations that do not already exist in the relevant government databases. If the records production will entail multiple tables, I ask that the FOIA officer take steps to ensure that I will be able to link those tables together upon receipt.

14. Plaintiff further requested that her 2018 Naturalization Data FOIA Request be placed in a queue corresponding to the date of the request was submitted.

15. In her October 16, 2018 letter, Plaintiff further clarified the meaning of the requested date range in her request: "My request pertained to records within the following date range: 'between September 13, 2013 and the present.' I am writing to clarify that the cut-off date for the data should be the completion date of the data extraction."

16. On or around January 14, 2019, Plaintiff discovered via her online account that USCIS had closed her request.

17. By email dated January 14, 2019, Plaintiff inquired about the status of her request:

I did not hear back from the FOIA office since I submitted my certification letter on October 16, 2018 (please see attached). I checked the status of my FOIA request online (please see screenshot below), and it now states that my request was "processed on 11/24/2018." Again, I did not receive any further communications or responsive records from the FOIA office since I submitted my certification letter on October 16, 2018, so I do not know what it means for my request to have been "processed on 11/24/2018." I would appreciate an explanation. Thank you.

18. By email dated January 17, 2019, USCIS acknowledged that USCIS inadvertently closed her case with no response. USCIS informed Plaintiff that in order to rectify the error and reopen her request, it would have her request created as a new case with a new tracking number. However, USCIS noted that it would continue to consider the date of receipt August 8, 2018, which was the date USCIS received Plaintiff's original request.

19. By email dated January 17, 2019, Plaintiff re-sent USCIS a copy of her October 16, 2018 letter, and reiterated, "[i]f the records production will entail multiple tables, I ask that the FOIA officer take steps to ensure that I will be able to link those tables together upon receipt." Plaintiff also reiterated her clarification that "the cut-off date for the data should be the completion date of the data extraction."

20. On February 7, 2019, USCIS sent Plaintiff an email with an attached acknowledgment letter dated January 22, 2019. In its January 22, 2019 letter, USCIS acknowledged Plaintiff's reopened 2018 Naturalization Data FOIA Request and assigned it tracking number COW2019000066. USCIS informed Plaintiff that it had placed her request on simple track processing.

21. In its January 22, 2019 letter, USCIS further informed Plaintiff that it implemented a "cut-off" date of February 7, 2019, the date that it began the search for records.

22. On February 8, 2019, Plaintiff emailed USCIS, noting that the description of her FOIA request included in USCIS's January 22, 2019 acknowledgment letter only contained a partial list of categories of data included in her original request. Plaintiff requested confirmation that USCIS was processing her original request in its entirety, rather than just the incomplete description included in the January 22, 2019 acknowledgment letter.

23. On February 12, 2019, USCIS replied to Plaintiff's email confirming that "everything [Plaintiff had] requested" in the 2018 Naturalization Data FOIA Request had been requested from USCIS's statistics office.

24. On January 28, 2020, Plaintiff received by mail a CD containing a final action letter dated January 23, 2020, and nine spreadsheets of records.

25. Contrary to USCIS's earlier representation that it had implemented a cut-off date of February 7, 2019, the records released reflected a cut-off date of August 6, 2018.

26. On March 11, 2020, Plaintiff appealed the adequacy of USCIS's search and disclosure of records. Broadly speaking, Plaintiff appealed (1) USCIS's failure to apply the requested date range, resulting in records reflecting data only through August 6, 2018, rather than the requested "completion date of the data extraction"; (2) USCIS's failure to include requested anonymized ID variables to allow for identification of an individual over time or across separate tables; (3) USCIS's withholding of certain categories of data under 5 U.S.C. § 522(b)(6) of FOIA ("Exemption (b)(6)"); (4) USCIS's failure to provide requested notes on the database query and translation files for the fields containing coded entries; and (5) USCIS's failure to either produce or explain the nonproduction of certain categories of requested records. A copy of the 2018 Naturalization Data FOIA Appeal is attached hereto as Exhibit B and incorporated herein.

27. By letter dated March 18, 2020, USCIS acknowledged Plaintiff's appeal and assigned it tracking number APP2020000490.

28. By letter dated April 9, 2020, USCIS informed Plaintiff that with respect to her appeal of the withholding of information under Exemption (b)(6), USCIS "decided that disclosure of certain information [Plaintiff] requested would not constitute a clearly unwarranted

invasion of privacy,” and therefore provided Plaintiff with updated spreadsheets. A copy of USCIS’s April 9, 2020 letter is attached hereto as Exhibit C and incorporated herein.

29. The April 9, 2020 letter further stated, “With respect to the remainder of your objections, you are asking USCIS to answer questions about its records response, explain its records response and to supplement that response. However, FOIA does not require USCIS to do what your appeal requests.”

30. The updated spreadsheets produced by USCIS provided data for some of the naturalization applicants’ date of birth, city, and county, which were previously withheld under Exemption (b)(6). The new productions also included some data from USCIS Form N-565, which Plaintiff had not requested. USCIS continued to withhold other categories of data, such as the country of birth, under Exemption (b)(6).

31. Plaintiff has received no further communication from USCIS regarding her 2018 Naturalization Data FOIA Request.

2019 Supplemental Naturalization Data FOIA Request

32. On October 9, 2019, Plaintiff submitted a FOIA request to USCIS, seeking, *inter alia*, records related to naturalization data:

I request anonymized, individual-level data on every person who filed an application for naturalization with the U.S. Citizenship and Immigration Services (“USCIS”) between August 1, 2018 and the present.

33. Plaintiff’s request included several specific categories of data related to applicants’ responses to USCIS Form N-400, Application for Naturalization. This request was identical to the 2018 Naturalization Data FOIA Request, except with a later date range, for the purpose of capturing the date range following the search date cut-off for Plaintiff’s first request. Plaintiff’s 2019 Supplemental Naturalization Data FOIA Request included a request for a fee

waiver. A copy of the 2019 Supplemental Naturalization Data FOIA Request is attached hereto as Exhibit D and incorporated herein.

34. In her 2019 Supplemental Naturalization Data FOIA Request, Plaintiff also requested “current translation files for any fields containing coded entries (e.g., data dictionary), and detailed notes on the database query and limitations of the data, including explanations of any changes to the way any given field might have been coded over time,” as well as “an anonymized ID to identify the individual both within a single table and across separate tables or outputs if the data is provided in separate tables.” Ex. D.

35. By letter dated October 18, 2019, USCIS acknowledged Plaintiff’s 2019 Supplemental Naturalization Data FOIA Request and assigned it tracking number COW2019501425. In its October 18, 2019 letter, USCIS denied Plaintiff’s fee waiver request.

36. By letter dated November 12, 2019, Plaintiff appealed USCIS’s denial of her fee waiver request. A copy of Plaintiff’s 2019 Supplemental Naturalization Data FOIA Appeal is attached hereto as Exhibit E and incorporated herein.

37. By letter dated November 15, 2019, USCIS sent Plaintiff another acknowledgement letter of her 2019 Supplemental Naturalization Data FOIA Request, granting her fee waiver.

38. By letter dated November 21, 2019, USCIS acknowledged Plaintiff’s appeal, assigned it tracking number APP2019501624. In the letter, USCIS informed Plaintiff that it granted her request for a fee waiver and that she should have received correspondence to that effect dated November 15, 2019.

39. By letter dated May 27, 2020, Plaintiff clarified the meaning of the requested date range in her request:

I requested anonymized, individual-level data on every person who filed an application for naturalization with the USCIS between August 1, 2018 and the present. I write to clarify that by my use of the term, “the present,” I mean the “present” at the moment of the data extraction, not the date of my request.

40. Plaintiff has received no further communication from USCIS regarding her 2019 Supplemental Naturalization Data FOIA Request.

Exhaustion of Administrative Remedies

41. With respect to Plaintiff’s 2018 Naturalization Data Request, following production of responsive records, Plaintiff timely filed an appeal objecting to the scope of the records produced and certain withholdings. USCIS subsequently issued a final determination as to Plaintiff’s 2018 Naturalization Data Request Appeal.

42. With respect to Plaintiff’s 2019 Supplemental Naturalization Data Request, as of the date of this complaint, aside from USCIS’s grant of Plaintiff’s fee waiver request, USCIS has failed to (a) notify Plaintiff of any determination regarding her request, including the scope of any responsive records USCIS intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

43. Through USCIS’s final determination on Plaintiff’s 2018 Naturalization Data Request and corresponding administrative appeal, and its failure to respond to Plaintiff’s 2019 Supplemental Naturalization Data Request within the time period required by law, Plaintiff has actually and constructively exhausted her administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Records

44. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

45. Plaintiff properly requested records within the possession, custody, and control of Defendants.

46. Defendants are an agency subject to FOIA and a component thereof, and must therefore make reasonable efforts to search for requested records.

47. Defendants failed to conduct searches reasonably calculated to uncover all relevant documents.

48. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to Plaintiff's FOIA requests.

49. Defendants' failure to conduct adequate searches for responsive records violates FOIA.

50. Plaintiff is therefore entitled to injunctive and declaratory relief requiring Defendants to promptly make reasonable efforts to search for records responsive to Plaintiff's FOIA requests.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

51. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

52. Plaintiff properly requested records within the possession, custody, and control of USCIS.

53. Defendants are an agency subject to FOIA and a component thereof, and must therefore make reasonable efforts to search for requested records.

54. Defendants are wrongfully withholding non-exempt agency records requested by Plaintiff by failing to produce non-exempt records responsive to her FOIA requests.

55. Defendants are wrongfully withholding non-exempt agency records requested by Plaintiff by failing to segregate exempt information in otherwise non-exempt records responsive to her FOIA requests.

56. Defendants' failure to provide all non-exempt responsive records violates FOIA.

57. Plaintiff is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

- (1) Order Defendants to conduct searches reasonably calculated to uncover all records responsive to Plaintiff's FOIA requests submitted to Defendant USCIS.
- (2) Order Defendants to produce, within twenty days of the Court's order, any and all non-exempt records responsive to Plaintiff's FOIA requests and *Vaughn* indexes of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests;

(4) Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C.

§ 552(a)(4)(E); and

(5) Grant Plaintiff such other relief as the Court deems just and proper.

Dated: July 1, 2020

Respectfully submitted,

/s/ Mehreen Rasheed

Mehreen Rasheed

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